IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 352 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HARUNKHAN NIZAMKHAN PATHAN

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR KG SHETH AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 23/04/2001

ORAL JUDGEMENT

1. The petitioner abovenamed has preferred this petition under Article 226 of the Constitution of India challenging the order of his detention passed by the Commissioner of Police, Vadodara - respondent no. 2 herein on 14.9.2000 being No. PCB/PASA/DTN/44/2000 on

the ground that the petitioner was found to be a bootlegger and therefore, he was required to be detained in exercise of the powers conferred by Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short "PASA").

2. The petitioner has challenged the aforesaid order of his detention dated 14/9/2000 on various grounds. One of the ground raised by the petitioner can be found from the para 10, 11 and 12 of the grounds of petition at internal page Nos. 6 and 7. There it has been contended that the petitioner has made representation to the Home Minister on 22.11.2000 but no response has been received to that representation. It is further contended that on 30.8.2000, the offence was registered against the him and he was released on bail on 2.9.2000 and thereafter, the order of detention was passed on 14.9.2000 and therefore, there was unexplained delay in passing the detention order. It is further contended that the anti-social squad recorded certain statements of witnesses, names of whom has not been disclosed to the petitioner, on 10.9.2000, 11.9.2000 and 12.9.2000 and they were verified by the Detaining Authority on 14.9.2000 and the order of detention was passed on 14.9.2000. That there was not time leg between the recording of statement and verification thereof and date of the order of detention passed against the petitioner. That therefore, the detention order was passed in undue haste and without application of mind. Since the order has been passed without application of mind, the same cannot be sustained in the eye of law and therefore, order of detention is illegal.

3. On the aforesaid contention, the petitioner has prayed that the order of detention may be treated to be illegal and consequently, the order of detention passed against him be quashed and set aside and the petitioner may be set at liberty forthwith.

4. On receiving the petition, Rule was issued and Mr. K.G. Sheth, learned AGP appears on behalf of the respondents and waived service of Rule. I have heard Ms. Subhadra G. Patel learned advocate for the petitioner and Mr. K.G. Sheth, learned AGP for the respondents.

5. Learned advocate for petitioner has submitted that the statements of unnamed witnesses were recorded on 10.9.2000, 11.9.2000 and 12.9.2000 by the concerned Authority and the same have been verified by the Detaining Authority on 14.9.2000 and the order of

detention was passed on the same day. That, this shows that the material placed before the Detaining Authority was not properly considered and detention order was passed in undue haste. That therefore, the case suffers from non application of mind and hence, the order passed against the petitioner requires to be quashed and set aside.

6. In support of her arguments, she has referred to and relied upon decision of this Court reported in case of RENUBHAI BHIKHABHAI BHARWAD (VEKARIA) VS. STATE OF GUJARAT, reported in 2000(3) GLR P.2696. If, we go through the facts of the said case, it is clear that the proposal of detention was received on 27.8.1999, verification of the statements was made by the Detaining Authority on 28.8.1999 and the detention order was passed on 30.8.1999. The authority was required to verify the statements of three witnesses. It was therefore, held that the observations of the Detaining Authority was an illegal one and devoid of application of mind and therefore, the order was required to be treated to be illegal. This Court observed in that matter as follows :

> "Once the materials are placed before the Detaining Authority with the proposal by the sponsoring authority, it must be reasonably sufficient time for the purpose of verification of the facts and the consideration of the entire material with an active application of mind and the order has to be passed at the earliest opportunity, but in this process to strike the balance between the public interest and the right of the detenu either of the two should not be defeated in any manner and the whole process must indicate that the detaining authority had applied its mind with the requisite approach and it had also devoted sufficient time before arriving at the decision to claim the privilege under Section 9(2) of the Act and also to come to the conclusion that the detenu was required to be detained immediately. In the facts of the present case, I find that this requirement of maintaining the balance has been defeated and the detention order has been passed on 30th August, 1999 i.e. on the next day to the date on which the materials were considered by the detaining authority."

7. It is therefore, clear that the facts of that case are almost similar to the facts of the case before us. In the present case also there was no time leg

between the recording of statements, verification thereof and order of detention. It is clear that the verification of the statement has been made by the detaining authority on 14.9.2000 and the detention order was passed on the very same day without properly considering the evidence and without properly applying mind. In that view of the matter, it is clear that the detaining authority cannot claim privilege under Section 9(2) of the Act. In that view of the matter, the further continuation of the detenu would become illegal and consequently, the order of detention cannot be sustained in the eyes of law.

8. In that view of the matter, the order passed by respondent no. 2, detaining the petitioner as aforesaid, cannot be sustained in the eye of law.

9. For the reasons stated above, the petition is required to be allowed and the order of detention against the petitioner is required to be set aside. In view of above, other points have not been press into services.

10. For the fore going reasons, the petition is allowed. The impugned order dated 14/9/2000 passed by the Commissioner of Police, Vadodar city is quashed and set aside. The detenu shall be released forthwith if not required in any other case. Rule is made absolute accordingly. Direct Service Permitted.

(D.P. Buch, J.)

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